

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Case No.: 2:15-cr-00062-APG-DJA

Plaintiff

Order

v.

LOUIS MATTHEWS,

Defendant

Defendant Louis Matthews filed a motion under 28 U.S.C. § 2255 claiming, among other things, that his trial counsel was ineffective. ECF No. 438. His allegations of ineffective trial counsel were expanded in his reply brief. ECF No. 454.

When a defendant files a § 2255 motion, the district court “shall” grant an evidentiary hearing “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b). Rule 7 of the Rules Governing § 2255 Proceedings permits the court to “direct the parties to expand the record by submitting additional materials relating to the motion.”

Here, there is insufficient evidence to review Matthews’ ineffective assistance of counsel claim because the record does not “affirmatively manifest the [claim’s] factual or legal invalidity.” *United States v. Rodriguez*, 49 F.4th 1205, 1213 (9th Cir. Sept. 23, 2022) (quotation omitted). Because Matthews “raises a claim which in fairness requires disclosure” of protected communications, I deem the attorney-client privilege between Matthews and his prior counsel, Mace Yampolsky, implicitly waived only for purposes of his ineffective assistance of counsel claim. *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir. 1992). I therefore order

1 Mr. Yampolsky to submit an affidavit responding to Matthews' allegations of ineffective
2 assistance of counsel as set forth in his petition and reply brief.

3 I THEREFORE ORDER counsel for the United States to provide Mace Yampolsky with
4 copies of Matthews' petition (ECF No. 438), the government's response (ECF No. 452),
5 Matthews' reply (ECF No. 454), and this order.

6 I FURTHER ORDER Mr. Yampolsky to file an affidavit responding to Matthews'
7 allegations in his petition and reply **by April 19, 2023**.

8 I FURTHER ORDER that both parties may file an optional reply brief, limited to five
9 pages and addressing only the newly admitted affidavit, **by May 19, 2023**.

10 DATED this 20th day of March, 2023.

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12 ANDREW P. GORDON
13 UNITED STATES DISTRICT JUDGE
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